



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET, Room 2-125
NEW YORK, NY 10007

MICHAEL A. CARDOZO
Corporation Counsel

CHRISTOPHER L. HEER
Phone: (212) 788-0960
Fax: (212) 788-8877
Email: cheer@law.nyc.gov

July 16, 2008

BY ECF

Honorable Laura Taylor Swain
United States District Judge
United States Courthouse
500 Pearl Street, Room 755
New York, New York 10007

Re: Frenkel v. NYC Off-Track Betting Corporation
08 Civ. 6050 (LTS)(AJP)

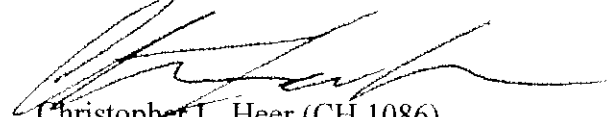
Dear Judge Swain:

I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel for the City of New York, and write on behalf of defendant New York City Off-Track Betting Corporation in response to Your Honor's July 10, 2008 Initial Conference Order. In response to 3(b) of said Order, defendant did not remove this action within 30 days of its commencement as the original complaint in this action did not contain any federal causes of action. Rather, defendant removed this action to federal court within 30 days of receipt of plaintiff's first amended complaint because, as detailed below, the first amended complaint was the first pleading to contain causes of action arising from federal law. See 28 U.S.C. §1446(b) ("If the case stated by the initial pleading is not removable, a notice of removal may be filed, a notice of removal may be filed within 30 days after receipt by the defendant...of a copy of an amended pleading...from which it may first be ascertained that the case is one which is or has become removable...")

On January 23, 2008, plaintiff served a summons and complaint, Index Number 100707/08, New York County, upon defendant. This complaint contained breach of contract claims under New York State law and no federal claims. Defendants thereafter moved to dismiss those claims. On June 6, 2008, plaintiff served opposition papers to defendant's motion to dismiss which included, inter alia plaintiff's first amended complaint. On June 16, 2008, plaintiff served the first amended complaint upon defendant. Unlike the initial complaint, the first amended complaint contained a claim pursuant to 42 U.S.C. §1983 alleging that defendant

violated plaintiff's constitutional rights. On July 2, 2008, within 30 days of receipt of plaintiff's first amended complaint containing these federal claims, defendant filed its Notice of Removal in this Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Christopher L. Heer', with a long horizontal flourish extending to the right.

Christopher L. Heer (CH 1086)
Assistant Corporation Counsel

cc: Bernard Weinreb, Esq. (by ECF and Email)